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December 8, 2011

Nicholas Jacobs, Attorney
Somach, Simmons & Dunn
500 Capital Mall Ste 1000
Sacramento, CA 95814

Subject: Forward Landfill Solid Waste Facility Permit Revision

Dear Mr. Jacobs,

The Environmental Health Department (EHD) has received your letter dated November 18, 2011. The EHD has the following responses to you questions:

1. Has the LEA determined that the proposed SWFP revision conforms with all relevant statutes and regulations governing the Landfill, as required by Public Resources Code section 44004? Does this include compliance with the terms and conditions of all other permits and authorizations from other regulatory entities that control the Landfill?

The permit revision does not conflict with Title 27 California Code of Regulations (CCR), Title 14 CCR, Public Resources Code (PRC) and the local land-use approvals. In July 1997, AB 1220 became affective. The PRC states that the LEA may consider other permits when writing the terms and conditions of the Solid Waste Facility Permit (SWFP), but there is no requirement for the LEA to consider other permits. The EHD is not aware of existing compliance issues concerning the facility as it pertains to other permits the facility currently hold.

AB 1220 removed overlap that had existed that required Solid Waste Facilities Permit (SWFP) to act as an umbrella permit (meaning that it had to consider all other permits and requirements as part of the SWFP). Please see the link below and the excerpt.

<http://www.calrecycle.ca.gov/Laws/Rulemaking/Archive/1997/AB1220/fsorwrd.doc>

“The Solid Waste Disposal Regulatory Reform Act (AB 1220) shapes the development of regulations as follows:

- 1) maintain a clear and concise division of authority and responsibility to remove all areas of overlap, duplication and conflict between the CIWMB and SWRCB in the regulation of solid waste disposal sites, without reducing current state minimum standards for environmental protection...”

2. Has the LEA inquired into the reasons for the Landfill's recording a Notice of Nonrenewal for Williamson Act Contract No. 72-C1-398 covering the expansion lands? Why would the Landfill take this new land out of a Williamson Act contract, set to expire in March of 2015, if it does not plan to dispose of solid waste on this land in the future?

The LEA has not taken into consideration the facility operators action regarding the Williamson Act Notice of Nonrenewal. This project concerns a minor boundary realignment. The Williamson Act is not a consideration that is necessary for this project. A change in the use of the property is not proposed as part of this project. There is no proposed landfill activity in the buffer area. This will be monitored monthly during the routine inspections conducted by the EHD staff.

3. What is the purpose of expanding the Landfill boundaries at this time without adding additional disposal capacity? If the ultimate goal is to expand disposal to this site, what is the timeline for doing so?

The boundary realignment will allow the facility to change to monitoring points for landfill gas. The current monitoring wells are located along the boundary of the site. Those monitoring points are in close proximity to the waste contained in the landfill. Maintaining compliance has been a challenge for the operator. Relocating the monitoring probes to the new boundary would help the operator to maintain compliance. The facility operator would be required to re-align the facility boundary in order to move the facility monitoring points to the new property. The time line for expansion is unknown. I would direct you to ask the operator.

4. It has been reported that the Landfill is currently taking gas measurements and performing its monitoring on this new site. Does this fulfill all of the Landfill's permit and monitoring requirements, and do measurements at this site produce accurate and reliable readings given their distance and elevation from the actual disposal site? Is this an attempt on the part of the Landfill to distort readings at the site in order to appear compliant with its various regulatory requirements?

The landfill monitoring is conducted by a third party consultant. The results are then check by the EHD staff during the routine inspection. The routine inspections for the Forward Inc. Landfill are conducted monthly. Title 27 CCR, Section 20925 (a) 2 (see below), allows the operator to establish at or near the facility boundary.

Section 20925. CIWMB - Perimeter Monitoring Network.

(a) Location

(1) Perimeter subsurface monitoring wells shall be installed around the waste disposal footprint but not within refuse. In some cases the installation of monitoring wells may not be necessary around the entire perimeter of the disposal site permitted facility boundary. In such a case, the operator shall demonstrate to the satisfaction of the EA that landfill gas migration could not occur due to geologic barriers and that no inhabitable structure or other property or land use, such as agricultural lands, within 1,000 feet of the disposal site permitted facility boundary is threatened by landfill gas migration.

(2) Perimeter monitoring wells shall be located at or near the disposal site permitted facility boundary. The operator may establish an alternate boundary closer to the waste disposal footprint based on a knowledge of the site factors in Section 20923(a)(2). When compliance levels are exceeded at the alternate boundary, the operator shall install additional monitoring wells closer to the permitted facility boundary, pursuant to Section 20937.

5. Is it appropriate for the LEA to approve expansion of a landfill that has consistently been the subject of fines, lawsuits, and several violation notices over the life of its operation?

The proposed project is not an expansion, but a minor boundary re-alignment. With that being said, the LEA is required to process all SWFP applications in accordance with Title 27, CCR, Section 21650. The LEA could revoke, or deny a permit based on the compliance history in accordance to the PRC, Section 44306. The Forward Inc. landfill has not been convicted of, or issued a final Notice and Order (N&O) in the last 3 years. The EHD has issued a Compliance Schedule (CS) in the form of an N&O on October 14, 2010. A CS is required by PRC, Section 44106, anytime a facility is listed on Calrecycle's list of facilities that violate State Minimum Standards (SMS). Forward Inc. came into compliance on January 28, 2011, eight months ahead of the compliance deadline in the CS.

The 2008 filing by the San Joaquin County District Attorney's Office is still in process and no determination has been made. The EHD is not a party to the Federal Clean Air Act filing and would direct you to contact the Federal Environmental Protection Agency for the details regarding that filing.

The LEA would consider any existing or ongoing compliance issues with the site at the time of the proposed permit. The LEA can condition the permit to address issues at the site. The Calrecycle staff conducts a pre-permit inspection to determine the facility's compliance status prior to their concurrence of a permit. This inspection was conducted on November 3, 2011. The facility's compliance history would help shape the permit terms and conditions, but would not preclude the facility from gaining approval provided they meet PRC, Section 44306.

6. Will this proposed expansion ever come before the San Joaquin County Board of Supervisors for approval?

The minor boundary realignment is not an expansion of the landfill. The Negative Declaration (ND) went before the San Joaquin County Planning Commission (SJPCP). The SJPCP members are appointed by the San Joaquin County Board of Supervisors (SJCBO). The SJPCP decision on the ND could have been appealed to SJCBO. The period for appeal has passed.

7. Has a Notice of Determination been approved and filed for the Negative Declaration in support of the SWFP revision?

The Notice of Determination (NOD) was filed on January 7, 2011.

8. How can the LEA approve this expansion when comments of the San Joaquin Council of Governments specify that potential waters of the United States are believed to occur on the site, and thus virtually any grading or similar activities on the site will require permits from either the Army Corps of Engineers or the Regional Water Quality Control Board?

The boundary realignment does not allow any change in the existing use of the property. The property will remain as agricultural use. There will not be excavating, grading, storing of supplies or equipment in the area added to the landfill by the boundary realignment.

9. How does this expansion properly integrate with the San Joaquin Multi-Species Habitat Conservation and Open Space Plan?

The boundary realignment does not allow any change in the existing use of the property. The property will remain as agricultural use. There will not be excavating, grading, storing of supplies or equipment in the area added to the landfill by the boundary realignment.

10. How does the Landfill intend to address the fact that any disposal on the new 184-acres of land would be inconsistent with the Airport Land Use Plan and potentially FAA guidance on siting of Landfills in close proximity to airports?

The boundary realignment area falls within the comprehensive airport land use plan for the Stockton Metropolitan Airport. This application was to amend the existing solid waste facility permit boundaries only under Title 27 CCR (California Code of Regulations) and is not for additional waste placement or disposal. Expansion into the undeveloped southwest area of the current permitted landfill site is not permitted. Therefore, the proposed facility boundary amendment will have less than a significant impact on airport imaginary surfaces. A letter dated December 9, 2010, was received from the Airport Land Use Commission (ALUC) stating, "the ALUC will consider this project as a consistent land use under the 1993 Airport Land Use Plan for Stockton Metropolitan Airport." The project is also consistent with the Countywide Integrated Waste Management Plan and no additional Master Plan, Specific Plan or Special Purpose Plan are applicable to this solid waste facilities boundary amendment application.

11. Why was the environmental impact of this expansion not considered cumulatively with the Draft EIR for expansion of the Landfill itself? Same question for why the gas to energy project is undergoing separate, piecemealed environmental review?

The proposed request is only to amend the current facilities waste boundary and update the landfill gas probe monitoring system no additional landfill activities will occur in the 184 acres. The cumulative effects of the proposed request, together with existing, approved and likely development have been reviewed. The initial study found no potentially significant impacts or cumulative impacts and a Negative Declaration was posted.

12. What are the environmental impacts of allowing ten (10) additional open days at the Landfill facility, including noise, traffic, and other associated impacts, and why was there no detailed discussion of these impacts in the Negative Declaration?

The addition of 10 more working days was analyzed during the Final Environmental Impact Report, certified in 2003, State Clearing House # 2001052081. There is more information regarding this document at the link below.

<http://www.ceqanet.ca.gov/QueryForm.asp>

13. Why is the Landfill allowed to continue to pollute Little John's Creek and degrade the surrounding environment?

The EHD has heard your clients concern regarding Little Johns Creek and added a condition to the permit that will require the operator to monitor Little Johns Creek on a weekly basis and during storm events for litter and unauthorized discharge. This is an effort to preclude degradation of the creek. If you or your client is aware of a specific instance or activity that is polluting Little Johns Creek, the EHD is willing to investigate the allegation.

In your letter, you requested additional information regarding the appeals process under PRC, Section 44307. During the public informational meeting at Forward Inc Landfill on November 21, 2011, I made statements to Adam Link, your associate that PRC, Section 44307 is primarily for operators to appeal enforcement actions and permit conditions. The PRC, Section 44307 does include a provision for members of the public to appeal to the Solid Waste Independent Hearing Panel (SWIHP) in matters where the members of the public feel the LEA has failed to act in accordance with the law or regulation. Please find attached a form for such an appeal.

If you have any questions regarding this matter, please contact me at (209) 468-0332



Robert McClellon, Program Coordinator REHS
Environmental Health Department